

Message Text

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ACTION DLOS-06

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INT-05 JUSE-00 L-03 NSAE-00 NSC-05 NSF-01 OES-06

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C O N F I D E N T I A L USUN 3366

FROM: LOS DEL

E.O. 11652: GDS

TAGS: PLOS

SUBJ: LOS: INFORMAL PLENARY ON DISPUTE SETTLEMENT AUGUST 20

1. INFORMAL PLENARY AUGUST 20 COMPLETED ARTICLE 15
(VESSEL RELEASE ON BOND) AND BEGAN ARTICLE 16 (APPLICABLE
LAW.)

2. IN CONTRAST TO AUGUST 19 DEBATE, ONLY ONE SPEAKER
(URUGUAY) ATTACKED CONCEPT OF ART. 15. SOUTH KOREA,
PAKISTAN, NETHERLANDS, CYPRUS, IRAN AND FIJI SUPPORTED
THE ARTICLE WITH CLARIFYING CHANGES ONLY. GHANA, AND
GREECE REITERATED SUPPORT. URUGUAY SAID OFFENSE TO
THE NATIONAL JURISDICTION REFERS TO REPLACING NATIONAL
COURTS WITH LOS TRIBUNAL, AND OTHERS SOUGHT CLARIFICATION
OF THE ROLE OF LOCAL REMEDIES IN RELATION TO ART. 15.
VENEZUELA CONCEDED IN SECOND STATEMENT OF THE DEBATE
THAT IT IS POSSIBLE A COASTAL STATE WOULD ABUSE ITS
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OBLIGATION AND THAT THE ISSUE IS THE SCOPE OF THE

ARTICLE, I.E., NO CRIMINAL MATTERS SHOULD RESULT IN VESSEL RELEASE. NETHERLANDS POINTED OUT THAT THE LANGUAGE IN PARA. ("IN ACCORDANCE WITH THE PRESENT CONVENTION" MEANS ART.) 5 APPLIES ONLY WHERE COASTAL STATE HAS AN OBLIGATION UNDER THIS CONVENTION, THEREFORE CRIMINAL CASES NOT INCLUDED. OTHERS ASKED TO CLARIFY THIS POINT. PAKISTAN AND VENEZUELA WISHED TO TAKE INTO ACCOUNT IN SOME MANNER THE DIFFERENCES BETWEEN DIFFERENT ZONES OF JURISDICTION.

3. FIJI PROPOSED EXPRESSLY TO LIMIT ARTICLE TO DETENTIONS IN VIOLATION OF THE PRESENT CONVENTION. INDIA SOUGHT TO DELETE REFERENCE TO LOS TRIBUNAL AND REPLACE IT WITH REFERENCE TO LOCAL COURTS OR THE MEANS FOR PEACEFUL SETTLEMENT SET FORTH IN ARTICLE 33 OF THE UN CHARTER. US SAID FIJI PROPOSAL WOULD BE ACCEPTABLE IF IT REFERS TO A VIOLATION OF THE OBLIGATION TO RELEASE A DETAINED VESSEL, AND OPPOSED INDIAN PROPOSAL. GHANA SPOKE A THIRD TIME TO SUPPORT LATTER U.S. POINT.

4. ISRAEL OPENED DEBATE ON ARTICLE 16 WITH PROPOSAL TO DELETE IT BECAUSE MATTER IS ADEQUATELY DEALT WITH IN STATUTE OF THE ICJ AND ANNEXES. HE CRITICIZED RSNT TEXT BECAUSE PARA 1(A) REFERENCE TO QUOTE THE LAW OF THE CONVENTION UNQUOTE HAS NO MEANING, AND QUOTE OTHER APPLICABLE LAW UNQUOTE CREATES ANOMALY IF IT REFERS TO DOMESTIC LAW OR IS MEANINGLESS IF IT DOES NOT, PARA 1(B) IS IMPROPER AND WOULD LEAD TO DISPUTES AFTER JUDGMENTS WHETHER THE FORUM OBEYED ITS MANDATE AND PARA 2 SHOULD FOLLOW ART. 38, PARA 2, OF THE ICJ STATUTE IF IT IS RETAINED. INDIA, SWITZERLAND, MADAGASCAR AND CHILE GENERALLY SUPPORTED ISRAELI CRITICISMS, BUT WISHED TO RETAIN THE ARTICLE. INDIA PROPOSED ADDITION OF QUOTE NOT INCOMPATIBLE WITH THE PRESENT CONVENTION UNQUOTE AFTER REFERENCE TO OTHER RULES OF INTERNATIONAL LAW AND DELETION OF PARA 1(B).

5. ALGERIA SAID IT IS HARD TO DISCUSS ART. 16 UNTIL WE AGREE THAT THERE WILL BE A FORUM HAVING JURISDICTION AND WENT ON TO ATTACK REFERENCE TO QUOTE THE LAW OF CONFIDENTIAL

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UNQUOTE THIS CONVENTION AND QUOTE OTHER APPLICABLE LAW UNQUOTE IN PARA 1(A). ALGERIA WISHED TO INCORPORATE SOMEHOW REGIONAL LAW AND SPELL OUT WHETHER IT WOULD APPLY TO STATES PRESENT IN THE REGION BY VIRTUE OF THEIR RIGHT OF NAVIGATION. ALGERIA ALSO WISHED FORUM TO APPLY GENERAL ASSEMBLY RESOLUTIONS (AND STATED SUCH RESOLUTIONS ARE NOT THEMSELVES LAW).
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